

**Ford Motor Company and Jerry Donovan
United Automobile, Aerospace and Agricultural Implement Workers of America, Local 2000, AFL-CIO-CLC (Ford Motor Company) and Jerry Donovan and Sean R. Donovan.** Cases 8-CA-25652, 8-CB-7517, and 8-CB-7584

January 27, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The principal issues presented in this case¹ are whether the judge correctly found that Respondents did not violate the Act in removing employee Jerry Donovan from his position as a training coordinator and that the Respondent Union did not violate the Act in its representation of terminated employee Sean Donovan, the son of Jerry Donovan. The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹On October 31, 1994, Administrative Law Judge Russell M. King Jr. issued the attached decision. The General Counsel filed exceptions and a supporting brief. Both Respondents filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

²The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Rufus Warr, Esq., for the General Counsel.

Nancy Schott, Esq., of Dearborn, Michigan, for the Respondent Employer.

Betsey A. Engel, Esq., of Detroit, Michigan, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

RUSSELL M. KING JR., Administrative Law Judge. This case was tried in Cleveland, Ohio, on May 2-3, 1994. The original charges, Cases 8-CA-25652 and 8-CB-7517, were filed by an individual Jerry Donovan on July 27, 1993,¹ against Ford Motor Company (Respondent Employer or Ford) and the United Automobile, Aerospace and Agricultural Implement Workers of America, Local 2000, AFL-CIO

(Respondent Union or UAW), collectively referred to as Respondents. Based on the above charges, on September 30, 1993, the Regional Director for Region 8 of the National Labor Relations Board (the Board), acting on behalf of the Board's General Counsel, issued a complaint alleging that Respondents unlawfully discharged Jerry Donovan (Donovan) as training coordinator because of his union activities. On November 10, 1993, in a related charge, Case 8-CB-7584, the individual Sean Donovan (Sean), Donovan's son, alleged that Respondent Union failed to provide adequate representation to him in a grievance procedure, and unlawfully negotiated a downgrade of his job classification because of his father's union activities. Sean's charge was amended on December 29. On January 31, 1994, the General Counsel² issued a complaint on this additional charge and consolidated it with the original complaint in a second amended consolidated complaint.

This case involves the legality of Donovan's removal as training coordinator. On June 13, Respondent Union requested that Respondent Employer remove Donovan from his training position because of his political activities in the Respondent Union. In particular, Donovan was extremely critical of and campaigned against John Hatcher for Respondent Union president. Upon Hatcher's election as president, he requested that Respondent Employer remove Donovan as training coordinator, asserting that he could not trust Donovan in that position. Respondents assert that Donovan's removal was lawful because the job in question is an "appointed" position, and not a "bid" position.

This case also deals with a charge brought by Donovan's son, Sean, who was terminated by the Respondent Employer for exceeding the number of unexcused absences permitted by the union/company agreement. The General Counsel has alleged that the Respondent Union failed to properly process Sean's grievance concerning his termination of employment. Upon reinstatement, the General Counsel also alleged that the Respondent Union unlawfully negotiated a downgrade in his job classification, job seniority, and induced Sean to waive certain employee rights because of his parental affiliation with Donovan. It is alleged that the Respondent Union's activities were the result of political differences between Donovan and Hatcher. As such, the General Counsel claims that the Respondent Union failed to represent Sean for reasons that are unfair, arbitrary, invidious, and has breached its fiduciary duty to him and its members.

On the entire record, including my observations of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and counsel for the Respondents, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Ford, a Delaware corporation, with an office and place of business in Avon Lake, Ohio, has been engaged in the manufacture of automobiles. Annually, Ford sold and shipped from its Avon Lake, Ohio facility goods valued in excess of \$50,000 directly to points outside

²Hereafter, the term "General Counsel" will normally refer to the attorney in the case acting on behalf of the Board's General Counsel, through the Regional Director.

¹All dates hereafter are in 1993 unless otherwise indicated.

the State of Ohio. I find, as admitted, that Respondent Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).³

Further, and as admitted herein, I find that the Respondent Union has been at all times material a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR PRACTICES

A. *The Testimony and Evidence*

1. Respondent's Modern Operating Concept Agreement

At Respondent Employer's automobile manufacturing plant in Avon Lake, Ohio, Ford manufactures two types of vehicles: the Econoline unit, which operates under a traditional collective-bargaining agreement with the UAW; and the Villager unit, which operates under the Modern Operating Concept Agreement (MOA). The MOA was created to foster better working relationships between UAW and Ford. David Porter, Respondent Employer's plant manager, testified that the MOA was designed to provide "more flexibility for the Company and more opportunity for the people that are represented in that unit." The MOA calls for a "team concept" approach. The MOA agreement expressly states that the "objective of the Team Concept Agreement is to move the decision making process to the levels most directly involved with the build[ing] of the vehicle. As problems or concerns develop, Teams should have the ability to participate in problem resolution of these issues."⁴ The MOA emphasizes the formation of union/management teams, and the participation by both as "equal partners." All parties acknowledged that the MOA agreement was a joint relationship between union and management. In order for the concept to work, the training program would require the commitment and cooperation of both UAW and Ford.

A critical aspect of the MOA concept was its training function. The bargaining agreement between union and management explicitly states that both parties would "participate, as equal partners, in identifying team training needs and developing and implementing training programs to meet these needs."⁵ Both Respondent Union and Respondent Employer had joint input into how the training program developed. A "joint training" mission statement, goals, and organizational chart was created. Under the MOA, besides fostering a team approach, wage increases were contingent on the types of training an employee received.

The "Joint Training Steering Committee" oversaw the training program. The committee consisted of David Porter, Ford plant manager; J. Sanford, Ford assistant plant manager; Charlie Schonberger, Ford assistant plant manager; Don Schnur, UAW president; Jerry Davis, UAW bargaining committeeman; and Pete Greenleaf, UAW health and AFC representative. The primary functions of the group were to, inter alia, maintain joint and ultimate responsibility for the planning, implementation, and evaluation of all training development at the plant; determine training objectives and priorities; provide direction and guidance for the Joint Training

Administrators, and allocate financial and human resources required to achieve training objectives. The training administrator's functions were, inter alia, to work in conjunction with the Training Matrix Team and Joint Training Steering Committee to coordinate all training and development activities on a daily basis, and assist in the design, development, and evaluation of technical and nontechnical training programs to ensure that each training objectives are met.

The joint training program was divided into two types approaches: Statistical Process Control (SPC) and Generic. SPC is a management technique widely used by Ford. Using a technique called "Process Work Sheets (PWS)," every plant operator is given the opportunity to write down how his or her job is to be done. Another technique used is called Continuous Improvement (CI)." CI encourages people to participate in achieving quality and productivity. Both SPC techniques require a considerable amount of training. Generic training deals with the training of skilled tradespersons. Ford felt that it was essential to provide state-of-the-art opportunities for skilled tradesmen to develop their abilities. As a result, Ford created the UAW technical trainer position.

2. Jerry Donovan's union activities

It is undisputed that Jerry Donovan has a long tenure in union politics. Hired by Ford on January 20, 1968, as an electrician, Donovan first ran for union office in May 1969. He was elected as a third alternate committeeman for the Lorain, Ohio plant, Local 425. Shortly thereafter, Donovan assumed a full-time position as district committeeman and held that post until 1974. Upon transfer to the Avon Lake, Ohio, Donovan was elected as skilled trades chairman in mid-1975. In 1977, he unsuccessfully ran for chairman of the Ohio assembly unit. In 1981, Donovan was elected vice president of the Respondent Union. In that capacity, Donovan held dual roles as district committeeman, and at times, served as acting president when the president was not available. Donovan ran for reelection as vice president in 1984 but was defeated. In 1987, Donovan's political ally, John Hunter, was elected president of the Respondent Union. Hunter appointed Donovan as energy control and power lock coordinator for the Respondent Union. When Hunter resigned to take an international staff position with Ford, then vice president Frank Murphy, a political opponent of Donovan, became president. Murphy removed Donovan from his appointed post as energy control and power lock coordinator and replaced him with John Hatcher, another of Donovan's political opponents. In 1988, Donovan was elected as bargaining committeeman.

In 1990, Donovan, Murphy, and Don Schnur ran for president of the Respondent Union. There was an explicit agreement between Donovan and Schnur that if either one of them did not make the runoff election, they would collectively support each other against Murphy. The winner would then "take care" of the other by providing him with some kind of political appointment. Having received the lowest number of votes in the general election, Donovan actively supported Schnur's candidacy in the runoff election. Schnur defeated Murphy to gain the union presidency. In 1993, Schnur and Donovan supported one another in their campaigns for president and vice president, respectively. Both Donovan and Schnur lost their races. Donovan lost to Murphy, and Schnur lost to current union president John Hatcher.

³ 29 U.S.C. 151 et seq.

⁴ Modern Operating Concept Agreement between Ford and UAW, 2nd Unit, VAX-54, dated January 3, 1991.

⁵ Id.

It is not disputed that Donovan and Hatcher have been political opponents. Donovan testified that he and Hatcher have been politically at odds since about 1985. In 1987, Donovan adamantly opposed Hatcher's reelection bid for president. In a campaign leaflet, Donovan proclaimed his support for John Hunter and exclaimed, "a vote for the incumbent is a vote for business as usual. A vote for John Hunter will send a loud message to the Company that Local 2000 is *NOT FOR SALE*." In an open letter to the union membership, Donovan asserted that if Hatcher is elected as president, the union would lose "hundreds of jobs." Another leaflet pronounced, "Never in over 25 years with the U.A.W. have I *EVER* seen a local union leadership which was so spineless, inept or pathetic as the president [sic] leadership of Local 2000."

3. Donovan's job: Which was it?

There are two jobs in question. UAW technical trainer and joint training coordinator. The UAW technical trainer position is held by Richard Zahn. The joint training coordinator is the position in dispute regarding Donovan.

Donovan testified that about March 1990, he applied for a job bid posted as a "skill trades trainer." The complaint alleges that Donovan was unlawfully removed from the position of "training coordinator." The official job posting referred to the position as "UAW technical trainer." The UAW technical trainer would work in conjunction with the "training matrix team" to establish training programs for Ford employees. Candidates were restricted to skilled tradespersons. When Donovan applied for the position, he held a full-time union position as bargaining committeeman. Donovan testified that under the terms of the national agreement between Ford and UAW, employees serving full-time union positions were entitled to bid for job openings. Donovan testified that when the official leaves his or her union capacity, that person, if selected, may commence the position he bid for.

It is disputed whether the selection of the UAW technical trainer was based on "seniority" or "date of entry." Donovan testified that the selection of the UAW technical trainer was based on the candidate's "date of entry." Harmon testified that selection for the UAW technical trainer was based on "seniority." Respondent Employer's job posting indicates that selection was based on "seniority." Date of entry is when one becomes classified as a skilled tradesperson. Seniority is based on when one begins employment.

Of the 25 employees who bid for the UAW technical trainer position, Zahn, a skilled tradesman, was awarded the position. There are conflicting theories on how Zahn got the position. Assuming that selection was based on seniority, Zahn was entitled to the position. Zahn's seniority date of June 29, 1963. Donovan's seniority date was January 20, 1968. In the alternative, assuming the position was based on date of entry, Donovan was the most senior applicant with a date of entry of January 20, 1968. Richard Zahn was the second most senior applicant with a date of entry of November 19, 1968. Because Donovan held a full-time union position at the time, Zahn assumed the responsibilities as UAW technical trainer. Donovan testified that he did not file a grievance to challenge the bid. Donovan testified that when he left his union position, he assumed he could commence the procedure to notify the company that he would be available for the training job. Whatever the case, Jerry Davis, the

union bargaining committeeman at the time, attested to the validity of the selection of Zahn as UAW technical trainer.

After Schnur's election as president in June 1990, keeping his promise to Donovan that he would "take care" of him after the runoff election, Schnur spoke with Ford's human resource manager, Thomas Harmon, about an appointed position for Donovan. Schnur testified that Harmon mentioned that Donovan could go to "one of those training jobs" available in the training department. Schnur was not sure Donovan would want a training position because he promised Donovan an appointment under Ernie Laughton. Schnur spoke with Donovan to inquire if he would want a training position. Donovan told Schnur that he had bid on the UAW technical trainer job. "And that is where I first understood that there was a job bid," claimed Schnur. Under those assumptions, Schnur told Harmon that he had "no problem" with Donovan taking the training job, but wanted him to understand that at a later date Donovan was going to get an appointed position. Harmon, however, was under the assumption that the Donovan's position was an appointed position. Schnur admitted, however, that he had "no idea what the training function job was." The record clearly indicates that when Donovan assumed his training position, Zahn was not removed from his job as UAW technical trainer. Donovan testified that Ford added his position because it was felt that two persons would be required to meet the company's training needs. Harmon disputes Donovan's statement. In 1990, Donovan assumed his training position, which ultimately evolved into the joint training coordinator position.⁶

Donovan testified that when he began his training job, "there was no title at the time." Donovan added, "It was a trainer . . . Those names came down much later. . . . And as the jobs developed, you went from administrator to coordinator, whatever suited the purpose at the particular time." There was nothing in the record which indicated that a bid process was initiated for Donovan's position, separate and apart from Zahn's position. Donovan testified, however, that he was selected for his job in the same manner as Zahn. Schnur testified that when he assumed that Donovan's job was a bid position, he made no determination as to who the next qualified person would be to fill the post.

Plant Manager Porter testified that Zahn's and Donovan's respective positions were distinct in purpose and function from the very start. Porter testified that the UAW technical trainer was created to meet the "generic" training needs for skilled tradesmen for both the Econoline and Villager units. The UAW technical trainer position is indisputably a bid position. Porter claimed that Donovan's job as training administrator was created to ensure that union representation in the development of a joint training program was present in fostering the MOA concept. Porter declared that the main criterion for the training coordinator was that he be appointed by the president of the local union. Porter contradicted himself, however, stating that the UAW position was a "plant appointee," because it was Ford who paid the trainer's sal-

⁶Between 1990 and 1993, no other skilled tradespersons who originally applied with Donovan and Zahn became trainers. There were, however, nonskilled persons who became trainers. It was discovered that nonskilled production workers, Teddy William's, Helen Lowers, Bob Vita, and Shelly May, were hired as trainers. Donovan asserted that these individuals signed bid sheets but was not able to substantiate his claim.

ary. Porter clarified his statement stating that the trainer was appointed "jointly with management." In order to have joint training programs, Ford felt that it was essential for the president of the Respondent Union to support the team concept. In particular, Porter claimed that the president needed to have someone in the training coordinator position that he felt comfortable with and could trust to make decisions that would affect the union membership.

Donovan testified that because the MOA team concept was new, his job responsibilities at that time he started were not well defined. Donovan testified that some of his initial work was similar to Zahn's. Donovan worked in conjunction with Ford representatives in actually developing the joint training program. Donovan testified that having "no blue print or film," the trainers were charged with developing the parameters of the training program, creating a shift from the traditional management style to a more supportive team approach. As time progressed, it became apparent that Donovan's job functions expanded. While Zahn's duties remained primarily in the training of skilled tradespersons, Donovan's responsibilities broadened, taking on managerial and administrative capacities. In particular, Donovan developed programs for both hourly and salaried employees, worked with training consultants, interacted with union and management leadership, ensured that training concepts were being implemented on the production floor, and helped develop the team concept on a national scale. At the end of Donovan's tenure in the training department, he performed no direct training functions. As such, training documents referred to Donovan not as "UAW technical trainer," but as a "joint training administrator." Upon review of an organizational chart of the "Training Matrix Group," Donovan identified himself as a "joint training administrator," and Zahn as a "technical trainer." In a memorandum of February 5, 1993, to Alex's Aldrich from Donovan, he referred to himself as "Training Administrator."

Donovan served in his training capacity for 3 years. Upon the election of Hatcher as Respondent Union president in June (1993), Hatcher requested that Ford remove Donovan from his position as joint training administrator. Hatcher testified that he and Donovan had political differences. Hatcher needed someone that he could put "100 percent trust" in performing the training functions. Hatcher claimed that the removal of Donovan would be best for him and the union membership. On June 13, Hatcher wrote a letter to Human Resource Manager Harmon indicating that he wanted to replace Donovan with Murphy.⁷ As a result, discussion between Harmon and Hatcher ensued about Murphy's appointment. At first, Harmon disagreed with Hatcher's nomination because Donovan had been in the position for some time. Harmon and Hatcher then took the matter to Plant Manager Porter. Both Harmon and Hatcher agreed that the training function was essential to the success of the MOA. Harmon testified that in order to ensure union and company cooperation, it was important that Ford to support Hatcher's candidate for the training position. As such, Murphy was appointed to Donovan's job. A booth cleaner, Murphy was classified as a nonskilled employee. Nonetheless, he was selected to succeed Donovan as a joint training coordinator, a

position Donovan asserts is restricted to skilled trades personnel.

There is dispute as to whether Donovan's position was an appointed or bid position. The General Counsel declares that Donovan was unlawfully removed from his position as training coordinator because it was a bid position. Donovan claims that he assumed the position as trainer, a bid position, which ultimately evolved into the training coordinator position.

Respondents assert that Donovan's job was an appointed position. Hatcher testified that the training coordinator is appointed by and reported to the local union president. Porter, Assistant Plant Manager Schonberger, and Harmon claimed that Donovan was appointed to his position, testifying:

Harmon: "Q. Okay. The job that Jerry Donovan held after Schnur became President, was that a bid job or an appointed job?"

A. That was an appointed job.

Q. And why was Jerry Donovan appointed?

A. Well, because Don Schnur had indicated after he came into office that he was the preferred individual for that job and we discussed that among the operating committee and found that Jerry was qualified to do it and we supported, uh, that appointment."

Schonberger: Q. Mr. Schonberger, do you know how Jerry Donovan got his job?

A. "He was picked by Don Schnur."

Porter: "The essence of the discussions were that Jerry was going to be Don's training coordinator."

Don Schnur testified that after he was elected union president in 1990 he talked to Human Resource Manager Harmon, telling him "some of my projections for individuals that I wanted to, uh, appoint which were four individuals that helped me during my campaign to get elected. Those individuals were Jerry Donovan, which I expressed very, very thoroughly to him that was going to happen."

The General Counsel claims that because Donovan took orders from the Joint Training Steering Committee, he had minimal discretion in influencing policy. As such, the training position was not linked with representing the views of the Respondent Union. The General Counsel averred:

The Joint Training Steering Committee provided direction to the joint training coordinators with respect to policy. It was the function of the joint training coordinators to carry out the directions of the Joint Training Steering Committee. Thus, there was not a question of whether the training coordinators had a different philosophy of training or favored a certain policy. The evidence adduced at the hearing does not show that this was ever a valid consideration.⁸

Donovan testified that the union views were represented by the union president and the bargaining committeeman. Donovan testified that the training coordinator's duties were to ensure that the Joint Training Steering Committee's views were implemented. Donovan testified, at times he would even side with management to ensure that the training program was successfully implemented. In contradictory state-

⁷ Murphy was a political ally of Hatcher.

⁸ G.C. Br. 8.

ments, however, Donovan testified that he had a “management counterpart,” and for the most part, the joint training program was similar to other UAW and Ford programs where there were management and union representatives to ensure that both perspectives were heard. Donovan referred to joint coordinator Dr. Doug Young, an employee of Ford, as his “opposite.”

Ford claims that Donovan took his directions from Schnur. Plant manager Porter testified that Schnur relied on Donovan for input, stating: “You know, many times, Schnur made the point, you know when it comes to training, Jerry is my guy, you know, whatever he says is I’m going to go with.” Harmon testified that if there was a dispute between the Union and Ford, Donovan was to take the union position, at the direction of the union president. Hatcher testified that training coordinator answered to the president. Hatcher also added that the joint coordinator positions in themselves consisted of a union representative and a “company counterpart.”

4. Sean Donovan’s claims

Sean Donovan is the son of Jerry Donovan. Sean began his employment as an assembly technician at Respondent Employer’s Avon Lake, Ohio facility on August 11, 1992. Sean worked on the Villager (VX or 54) side of the plant. On June 8, 1993, Sean was running late for work. Previously, Sean had accumulated eight unexcused absences or “occurrences.” Potentially his ninth occurrence, Sean admitted he was frantic about missing work. Under the Ford attendance program, employees with less than 5 years of seniority are disciplined for an excess of four unexcused absences during a 12-month period. On the fifth occurrence, a reprimand and warning is issued to the employee. On the ninth occurrence, the employee is automatically terminated. Knowing he would be late for his 5:30 a.m. shift, Sean called his father to ask him what he should do. Donovan suggested he call Oscar Jones, Sean’s coordinator in the 54 body shop, and tell him that he would be tardy but would be present at work. Donovan testified that under the union agreement, tardiness is treated differently from absenteeism, and that if Sean got to work, he would be considered tardy, not absent. Sean testified that Jones would “cover” him, and that he would “take care of it.” The record indicates that Sean was not present at work on June 8, 1993. The grievance of June 9, 1993, expressly indicates that Jones instructed Sean to remain at home.⁹

On June 9, 1993, when Sean reported to work, Jones told him to report to the labor relations office. A staff person indicated to Sean that he would be charged with his ninth unexcused absence. Sean testified that he assumed that his absence would be classified as medical or unpaid personal leave. Sean insisted that Jones “covered” him and his absence from work would not be counted as an unexcused absence. Sean called his father and told him about the dispute in the labor relations office. Donovan called Jerry Davis and asked if he would talk to Assistant Plant Manager Schonberger and see if they could resolve the conflict. At that time, Sean requested union representation. Bob Bell and Ace Williams, both union representatives, arrived at the labor relations office and took Sean to the “grasp room” where they discussed the matter. After Sean was notified that he

was being terminated, he filed a grievance protesting the termination of his employment.

On June 12, 1993, Hatcher assumed his position as president of the Respondent Union. Donovan asked Hatcher to help Sean get reinstated. Despite their political differences, Hatcher testified that they had a “good” conversation. Hatcher assured Donovan that he would “do everything” he could to get Sean reinstated. Hatcher testified that he spoke with Schonberger about giving Sean “another chance.” Schonberger informed Hatcher that he would not reinstate Sean into unit II, on the Villager side of the plant. Hatcher also spoke with Thomas Springowski, bargaining committee member, about the possibility of reinstating Sean. On August 10, 1993, Hatcher was able to get an agreement from Harmon to reinstate Sean. Shortly after, Harmon informed Schonberger of his decision to reinstate Sean. Schonberger told Harmon of his opposition to reinstate Sean in the VX unit because it would send the wrong message to employees because of their existing attendance problems.¹⁰ Hatcher testified that he did not respond to Schonberger’s concerns at the meeting because his first concern was to get Sean reinstated.

After the meeting, Hatcher called International Union Representative Jerry Melillo to get his input on Sean’s reinstatement. Hatcher advised Melillo that Sean could be reinstated under the Econoline system, with a 1-year waiver of certain rights and privileges of employment.¹¹ Hatcher testified that the signing of a reinstatement waiver was a normal procedure required for all reinstated employees. Melillo suggested to Hatcher that if he could get Sean reinstated, you [Hatcher] “better take what you can get.” Melillo testified that he thought the agreement was a good one because of Sean’s limited tenure with Ford, and because of his discharge over absenteeism. The same day, Hatcher testified that he was unable to reach Sean so he called Sean’s mother to inform him of her son’s reinstatement. Within an hour, Donovan called Hatcher thanking him for his efforts. The time between Sean’s termination and reinstatement was approximately 2 months. Because Sean was transferred to the Econoline unit, the General Counsel claims that the Respondent Union unlawfully negotiated a downgrade in Sean’s job classification and job seniority.

III. ANALYSIS AND CONCLUSIONS

A. Jerry Donovan

It is unclear as to what the exact job title and position in question is. Donovan referred to position as “skill trades trainer.” The complaint described the position as “training coordinator.” Other references include: trainer, joint training

¹⁰ The record indicates that Ford was experiencing absentee problems in the VX unit, with an absentee rate between 10 to 12.1 percent in 1993. To contend with the absentee rate, Ford had to hire additional employees to run the Villager operation.

¹¹ The reinstatement waiver, *inter alia*, includes the waiver of all rights, including backpay, for the period beginning with the employee’s termination and ending with the employee’s reinstatement. Par. (d) provides: “I shall be regarded for disciplinary purposes, as being on probation for a period of one year and understand that I will not have access to the grievance procedure to protest the reasonableness of any penalty, including, discharge, I may receive during this period for an infraction of company rules or misconduct.”

⁹ Jones did not testify in the case.

administrator, training administrator, UAW trainer, UAW technical trainer, and UAW training administrator. Donovan contends that the job evolved from being a “trainer,” then taking on administrative and management functions, resulting, in the job title “training administrator.” Names, descriptions, and titles aside, I find that the training position in question is an appointed one. My conclusions are based not on fancy titles, but on a close analysis of the bid process and a functional review of Donovan’s job.

First, it is essential to conclude that the job in question is not that of UAW technical trainer, the position held by Zahn. Zahn was selected for and remains on the job a UAW technical trainer. The General Counsel has averred that the position in question is that of “training coordinator.” The complaint makes no claims that Donovan should be entitled to Zahn’s position. It is undisputed that the UAW technical trainer and joint training coordinator position are separate and distinct in their title, roles, and responsibilities. Thus, I am not faced with making the determination as to whether Donovan is entitled to Zahn’s job. I am charged with determining whether Donovan’s position, which eventually evolved as training coordinator, is an appointed or bid position. The case turns on this material fact because if the General Counsel fails to prove that Donovan job was a bid position, the removal of Donovan was legally valid.

No job posting, employee record, or personnel file was presented to determine Donovan’s job classification. In assessing Donovan’s job, I first look to the bid process, if any. It seems obvious to me that a bid position requires a bid process. Nothing in the record has indicated that a bid process was initiated for Donovan’s position, separate and apart from Zahn’s position. Hatcher testified that no new bids were announced. Neither Donovan, nor the General Counsel, has made such a claim. It is undisputed that Zahn’s job as UAW technical trainer involved a well-followed and documented selection process. A “statement of function” and “qualifications and criteria” for the UAW technical trainer position was developed, explicitly stating that the “selection process will be open to skilled tradesmen in the core trades of Electrician, Toolmaker, Pipefitter and Millwright with the following stipulations: Most qualified candidate based on criteria will be selected by merit and ability, and where they are equal, the employee with the greatest seniority shall receive preference.”¹² Had Donovan’s position been classified as a bid position, one would expect that a similar bid process would be initiated by the Respondent Employer to ensure that all interested candidates would apply. Having seen none, Respondents succeed a *prima facie* test in their assertion that Donovan’s job is an appointed position.

In adopting a functional approach, it is clear that the position evolved around the MOA concept. Because the MOA concept was new, the duties of Donovan’s position, in its inception, were ambiguous. As the Joint Training Steering Committee’s goals and objectives became clarified, so did Donovan’s job. It is undisputed that the overall responsibility of the training program was entrusted in the Joint Training Steering Committee, represented by UAW and Ford members. It is questionable, however, that Donovan and his company counterpart were mere foot soldiers, taking orders from

the committee. The very nature of the position leads me to believe that Donovan had substantial input into the policy making function of the training program. The MOA concept is based on team work, joint cooperation between union and management. It would appear odd if two union officials, or in the alternative, two company employees occupied the joint administrator positions. It would be repugnant to the very nature of the MOA concept. Donovan claims that as the training coordinator, he was merely carrying out the directives of the Joint Training Steering Committee. In light of the emphasis on the joint management between UAW and Ford, I am persuaded that Donovan had substantial input into the training program, and took the opportunity to inject the union perspective into the proceedings.

Donovan thinks that his job was a bid position. Hatcher, Porter, and Harmon testified that the position was an appointed one. At best, Schnur testified that it was a bid position, because Donovan told him so. Later, Schnur admitted that he really didn’t know what the job entailed. What tips the scale in favor of the Respondents is Donovan’s very own statement. Donovan testified that upon Hatcher’s election as president, he expected to be replaced as training coordinator. Donovan admitted, “I kind of had a had been expecting to be removed from it [the training coordinator job], okay, because it had been made very clear, that I was not a person that was going to be wanted in that position.” Bear in mind that Donovan has served in various union appointed and elected positions during the past 20 years. Over that period, he has garnished substantial knowledge and understanding of union-appointed positions. Had Donovan been under the strong assumption that his job was a bid position, there would not have been any doubt whatsoever that his job was in jeopardy.¹³

Donovan asserts that his job started out like Zahn’s job, but later evolved into the technical coordinator position. If that were the case, there would be another bid process. None existed. Additionally, Donovan’s job would be restricted to skilled tradespersons. Murphy was appointed to Donovan’s position. Murphy was a booth cleaner, classified as non-skilled personnel. If Harmon, Porter, and Hatcher sincerely believed that Donovan’s position was like Zahn’s, in addition to initiating a bid process, they would have selected a skilled tradesperson. As such, I credit Respondent’s testimony on this point.

In applying my findings that Donovan’s job was an appointed position, the law is clear as to its application. Respondent Union may legitimately remove members from positions within the union which involve policy making positions. The Board, in *Shenango Inc.*, 237 NLRB 1355 (1978), and its progeny, e.g., *General Motors Corp.*, 313 NLRB 998 (1994); *General Motors Corp.*, 297 NLRB 31 (1989); *Teamsters Local 292 (General Contractors)*, 280 NLRB 733 (1986), *affd. Kudla v. NLRB*, 821 F.2d 95 (2d Cir. 1987) asserted that a union “does have a legitimate interest in placing in offices such as chairman of the safety committee those people it considers can best serve the Union and its membership.” 237 NLRB at 1355. In *Shenango*, the charging party was removed from his union position solely because he supported the opposition candidates in a union election. The

¹² As previously stated, seniority for skilled tradespersons is based on date of entry.

¹³ A more appropriate question, which neither the General Counsel or the Respondents raise, is who had authority to remove Donovan?

Board added in *Shenango*, “The union is legitimately entitled to hostility or displeasure toward dissidence in such positions where teamwork, loyalty, and cooperation are necessary to enable the union to administer the contract and carry out its side of the relationship with the employer.”

The General Counsel contends that the case at hand is more akin to *Roofing, Metal & Heating Associates*, 304 NLRB 155 (1991), which involved the termination of a training instructor because he intended to run for a union office. The General Counsel asserts that this case controls because the trainer, like Donovan, was “without authority to carry out any collective bargaining responsibilities on behalf of the Union or its members in dealing with employers.” The administrative law judge found that the trainer did not hold an appointive union position and accordingly was not privileged to cause his discharge. Donovan, as I previously concluded, had substantial power to assert important union views within the MOA training process. I also point out that the training component had an impact on an employee’s compensation. I consider that facet of the training program to be significant among its decision makers. Where it not for the MOA concept, I may have been persuaded to find that Donovan’s job was under the direct supervision of the Joint Training Steering Committee. The record clearly indicates, however, that union and company views and responsibilities were jointly shared in all aspects of the MOA concept. Thus, I is distinguished *Roofing, Metal & Heating* from the instant case.

I find that General Counsel failed to make a prima facie showing that Jerry Donovan’s job was a bid position because General Counsel failed to prove that a bid process existed. A closer review of the testimony and functional analysis of Donovan’s job also leads me to conclude that the training coordinator position had the characteristics of an appointed position. The MOA concept provided significant opportunity for Donovan to influence policy. In a jointly shared position, it would be expected that both union and company representatives be chosen as its key administrators, reflecting the views of its respective sides. While the General Counsel makes an attempt to show that Donovan’s job was at the direction of the Joint Training Steering Committee, when considering the MOA concept as a whole, I find that Donovan’s job was a union-appointed position, and as such, that Donovan’s discharge as training coordinator was lawful under the Act.

B. Sean Donovan

I find the record filled with good-faith efforts by the Respondent Union in seeking reinstatement of Sean Donovan. The General Counsel claims that Hatcher failed to adequately represent Sean because he was reinstated to a different department. Despite political differences between Donovan and Hatcher, it was clear that Hatcher successfully negotiated the reinstatement of Sean in a timely, diligent manner. It is undisputed that Sean’s limited seniority at Ford, coupled with his atrocious absentee record, made it difficult for Hatcher to succeed. Yet, he put aside his political animosity for Donovan, used his clout with union and management officials, and negotiated a reasonable agreement feasible for both sides.

From a management standpoint, it would be difficult to reinstate Sean on the VX unit when absenteeism was a significant concern. It is a legitimate business interest that absentee policies be adhered to. It would set a bad example and could foster greater rates of absenteeism if employees knew they could violate company policy and get away with it. A reasonable alternative was Sean’s reinstatement in the Econoline unit.

The General Counsel also claims that Hatcher failed to represent Sean by acting arbitrarily or out of animus against Donovan. I disagree. I am persuaded by the rather amicable conversation between Hatcher and Donovan when Donovan asked that Hatcher help reinstate Sean. Donovan told Hatcher, “John, I know we have had our differences but we won’t let that affect our kids.” Hatcher who has two children working at the plant responded, “You know that, Jerry, that I will do everything that I can to get him reinstated.” Hatcher exhibited due diligence when he sought the counsel of Melillo. Had Hatcher uncontestedly supported Ford’s request to place Sean in the Econoline unit, it would seem odd that he speak to Melillo to get his advice. Such an act indicates to me a careful, not arbitrary, review and analysis of Sean’s case. It should be noted that nothing in the record has indicated that Hatcher expressly or covertly attempted to sabotage Sean’s reinstatement because of Donovan’s political activities. As such, the General Counsel failed to convincingly present evidence that would persuade me to think that Sean’s grievance was not properly addressed.

The General Counsel has also averred that Respondent Union induced Sean to waive certain employee rights under the collective-bargaining agreement. The record clearly indicates that the signing of a reinstatement waiver is a standard procedure for employees seeking to be reinstated and are put on probation subsequent to termination.

CONCLUSIONS OF LAW

1. The Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. There were no unfair labor practices inflicted by Respondents upon Jerry Donovan as alleged in the complaint.
4. There were no unfair labor practices inflicted by Respondent Union upon Sean Donovan as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

The second amended consolidated complaint in these cases is hereby dismissed.

¹⁴If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.